



## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Ouachita National Forest, Scott and Sebastian Counties, Arkansas; Heavener Coal Leasing Project; Environmental Impact Statement**

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA Forest Service (FS) is preparing an environmental impact statement (EIS) as the lead Federal agency with support from Federal cooperating agencies, the U.S. Department of Interior (DOI) Bureau of Land Management (BLM) and Office of Surface Mining Reclamation and Enforcement (OSMRE). The purpose of the analysis is to respond to a Federal coal Lease by Application (LBA) submitted to the BLM from the Emera Corporation on behalf of Ouro Mining Inc. The application seeks approval to access and recover Federal metallurgical coal resources from approximately 3,077 acres that underly lands on the Ouachita National Forest (ONF). No surface mining is proposed on National Forest System (NFS) lands. The FS and BLM have consent and leasing determinations to be made based in association with this EIS. The OSMRE does not have a decision to be made at this time but may tier to this analysis in the future.

**DATES:** Comments concerning the scope of the analysis for the EIS must be received by [insert date **30** days from date of publication in the ***Federal Register***]. The draft environmental impact statement (DEIS) is expected in July 2024. The final EIS is expected to be available for review in June 2025.

**ADDRESSES:** Documents pertinent to this proposal are available for review on the project website at: <https://www.fs.usda.gov/project/?project=64897>.

**Send electronic comments to:** <https://cara.fs2c.usda.gov/Public//CommentInput?Project=64897>.

**Send written comments to:** Forest Supervisor, Heavener Project, P.O. Box 1270, Hot Springs, AR 71902.

**FOR FURTHER INFORMATION CONTACT:** Contact FS Project Manager Michelle Davalos via email at SM.FS.HeavCoalProj@usda.gov or by phone at 276-220-1670. For the BLM, contact Robert Swithers, District Manager via email at SM.FS.HeavCoalProj@usda.gov or by phone at 601-919-4650. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** On December 21, 2012, a Federal coal LBA was submitted to the BLM Eastern States Office by Emera Corporation on behalf of Ouro Mining, Inc. On March 7, 2014, the BLM accepted the lease application. The application requests access to extract Federal metallurgical coal resources under lands managed by the ONF on the Poteau-Cold Springs Ranger District in Arkansas. The proposed lease area is in T3N, R32W, Sections 8-11, 14, 15, 17-19 and T3N, R33W, Section 13 in Scott and Sebastian Counties, Arkansas. The proposed Federal lease area is located adjacent and directly to the north of current coal leases held by Ouro Mining on private lands near Bates, Arkansas. The Emera Corporation's application involves a mix of reserved public domain lands and acquired lands on the ONF.

BLM is responsible for considering whether a coal lease would be offered through the competitive bid process and what stipulations would be required for surface resource protection. Because the lease would involve minerals underlying the ONF, the FS administrative unit with jurisdiction for managing surface resources, the BLM must have FS consent prior to deciding whether to offer the lease for sale.

### **Purpose and Need for Action**

The purpose of the project is to respond to the Federal coal LBA submitted to the BLM Eastern States Office by Emera Corporation on behalf of Ouro Mining Inc. to extract metallurgical coal from 3,077 acres beneath the ONF. Under the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. 181 et seq., and the Mineral Leasing Act for Acquired Lands of 1947 (MLAAL), as amended, 30 U.S.C. 351 et seq. The BLM is responsible for leasing Federal coal and regulation of

the development of that coal on approximately 570 million acres of the 700 million acres of mineral estate that is owned by the Federal Government. This responsibility encompasses Federal mineral rights on Federal lands and Federal mineral rights located under surface lands with non-Federal ownership. Under the authority of the MLA and MLAAL, the BLM administers leasing and monitors coal production.

Under the MLA, the BLM has responsibility for reviewing the Emera Corporation application and determining if it will approve the application and offer the lease for sale through a competitive bid process. The BLM takes into consideration whether leasing the applied for lands would be in the public interest (30 U.S.C. 181-287, 351-359; 43 CFR 3425.1 and 3472.1). The BLM regulations state the BLM must reject an application if “leasing of the land covered by the application, environmental or other sufficient reasons, would be contrary to the public interest” (43 CFR 3425.1-8(a)(3)). Many, often competing, interests must be considered in arriving at a public interest determination, including, but not limited to, the applicant’s request; the environmental impacts; the economic benefit to the local, state, and national economy; rights of qualified surface owners; ensuring a fair return for the use of the public resources; and conservation of the public resource (BLM Manual 3435). Further, because the lease would involve minerals underlying the ONF, the BLM must have FS consent prior to deciding whether to offer the lease for sale (43 CFR 3461.5). The ONF is an administrative unit of the FS and as such FS has the jurisdiction for managing surface resources. FS will determine whether to provide consent to the BLM under the applicable statutory standards.

The 2005 Ouachita National Forest Revised Land and Resource Management Plan (ONF Revised Forest Plan) does not address metallurgical coal leasing. For this reason, the FS will determine whether the proposed lease area on NFS lands is suitable for coal leasing. A forest plan amendment that provides additional direction for managing coal may be needed. If needed, the scope of the plan amendment would be limited to the 3,077 acres proposed for Federal metallurgical coal leasing. However, it would be programmatic in nature and plan direction would apply to future projects (36

CFR 219.13(b)). As part of its consent analysis, the Forest Service will consider, but not limit it to, the unsuitability criteria that the BLM applies on its own lands as outlined in 43 CFR 3461.5.

In association with the Federal coal lease application, the Forest Service will respond to a special use permit application received from Arkansas Valley Electric Cooperative to construct and operate approximately 3.0 miles (out of 9 total miles) of 161kV transmission powerline and 2.0 miles of associated new powerline access roads across NFS lands on the ONF for the purpose of providing electricity to the coal operation. The approximately 6.0 miles of powerline not on NFS lands would be addressed in the EIS cumulative effects analysis.

### **Proposed Action**

The FS will assess whether the proposed lease area on NFS lands is suitable for coal leasing and if so, whether to consent to leasing 3,077 acres of Federal coal underlying the Ouachita National Forest as described in the Emera Corporation application. As part of assessing consent, the FS will develop lease stipulations that protect surface resources. The stipulations will be included with any FS consent decision to lease. The BLM would include these stipulations in the coal lease.

Additionally, connected actions associated with the lease include the:

- Construction, operation, and maintenance of a 161kV powerline on 3.0 miles of NFS lands and the construction of approximately 2.0 miles of powerline access roads.
- Issuance of a special use permit that authorizes a 100-foot right of way (ROW) for the 161kV powerline. Issuance of the permit would be contingent on the metallurgical coal lease being sold, and the mining plan approved and permitted.
- If needed, a forest plan amendment that may add management direction for the leasing of metallurgical coal on 3,077 acres.

### **Expected Impacts**

Disclosure of potential adverse impacts to NFS lands includes subsidence, which means the land surface is lowered as a result of mining activities. Resources potentially affected include, but are not limited to, vegetation, soil, and water. The EIS will address the potential for impacts from increased

carbon emissions. Whether greenhouse gas emissions could approach significance over the life of the project is unknown at this time. Construction and maintenance of the electrical powerline and its associated roads would be designed to comply with the ONF Revised Forest Plan; significant impacts to vegetation, water, and soil resources are not expected.

### **Lead and Cooperating Agencies**

The FS is the lead agency for the preparation and development of the EIS. The BLM and OSMRE are cooperating agencies. The FS will coordinate with BLM and OSMRE as cooperating agencies during preparation of the EIS, during the public review process, and throughout the decision-making process. The FS and BLM will be making separate decisions. The OSMRE does not have a decision to be made at time but may tier to this analysis for future decisions.

### **Responsible Officials**

The official responsible for the Forest Service consent determination is the Ouachita Forest Supervisor. This authority was delegated by the Southern Region Regional Forester on October 16, 2023. The official responsible for the BLM leasing decision is the BLM Eastern States State Director.

### **Scoping Comments and the Objection Process**

This notice of intent initiates the scoping process, which guides the development of the EIS. In this process the FS and BLM are requesting comments on the plan amendment, potential alternatives and impacts, and identification of any relevant information, studies or analyses of any kind concerning impacts affecting the quality of the human environment. Additional opportunities for public comment will be provided when the draft EIS is available. Whether virtual or in-person meetings will be hosted during the scoping period is to be determined. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the final EIS; therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Commenting during the opportunity to comment provided by the FS Responsible Official as prescribed by the applicable regulations will also govern

eligibility to object once the final EIS and Draft Record of Decision has been published. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, they will not be used to establish eligibility for the objection process.

The site-specific FS decisions (consent and the powerline) will be subject to the FS's predecisional administrative review procedures established in 36 CFR part 218. Those wishing to object to the site-specific decisions must meet the requirements at 36 CFR part 218, subparts A and B, for the project.

If a forest plan amendment is needed, that decision will be subject to the plan-level administrative review procedures established in 36 CFR part 219. Those wishing to object to the forest plan amendment must meet the requirements at 36 CFR part 219, subpart B (per 36 CFR 219.54). (See 36 CFR 219.59(b)) It is possible that the 36 CFR parts 218 and 219 objection process would run concurrently.

### **Permits, Licenses or other Authorizations Required**

Should the BLM decide to sell the Federal metallurgical coal lease through the competitive bid process, OSMRE will be the permitting authority for the 3,077 acres of Federal land for coal leasing. OSMRE would approve and enforce the operator's subsidence control plan and ensure that mining-related impacts on the hydrological balance or acid mine discharge would be minimized. The Federal lease holder would be required to provide OSMRE with a final mine plan that provides details on how the underground mine and any surface infrastructure would be constructed, operated, and maintained.

OSMRE would prepare a mine plan decision document and make a recommendation to the DOI Assistant Secretary of the Interior for Land and Minerals Management (ASLM) whether to approve, approve with conditions, or disapprove the mine plan. OSMRE would request FS consent on the terms and conditions of the mine plan approval prior to submitting its recommendation to ASLM.

An additional finding is required by the Secretary of the Interior on whether Federal lands within the national forest have significant recreational, timber, economic, or other values that may be

incompatible with coal mining operations. That finding, as required by section 522(e)(2) of the Surface Mining Control and Reclamation Act (30 CFR 761.11(b)), would rely on a recommendation of compatibility and determination of compliance (1990 OSMRE and FS memorandum of understanding (MOU)) from the FS, and a subsequent compatibility determination from OSMRE. Operation and reclamation of the metallurgical coal mine would be under the permitting jurisdiction of OSMRE.

### **Nature of Decision To Be Made**

Among other considerations, the responsible officials will review the proposed action, other alternatives, environmental consequences, in order to make the following decisions:

#### **For the BLM the decisions to be made are whether:**

- (1) The proposed metallurgical coal lease area is acceptable for coal leasing (43 CFR part 3461).
- (2) Areas unsuitable for surface mining of coal have been identified as required by 43 CFR 3461.5.
- (3) There are special conditions designed to protect resources that would be required for a future coal lease.
- (4) The amount of coal recoverable has been identified and is acceptable for a future consideration of leasing.
- (5) The screening process has been completed in accordance with 43 CFR 3420.1-4(e).

If the BLM determines the proposed lease area is suitable and can be made available for a Federal coal lease, the lease would be offered for sale through the competitive bid process. The BLM decision for a lease to utilize Federal lands would be documented in a record of decision (ROD) issued by the BLM.

#### **For the FS the decisions to be made are whether:**

- (1) The lands underlying the ONF are suitable for coal leasing;
- (2) To provide consent, with appropriate lease stipulations to protect surface resources, to the BLM concerning a Federal coal Lease by Application (LBA) submitted to the BLM from the

Emera Corporation on behalf of Ouro Mining Inc.;

- (3) To approve the powerline and associated access roads and issue a special use permit with terms and conditions; and
- (4) If needed, to approve a forest plan amendment that may provide management direction for coal leasing on 3,077 acres within the ONF.

The FS decision on suitability, consent with surface leasing stipulations, the powerline and access roads special use permit, and a forest plan amendment (if needed) would be documented in a Record of Decision issued by the FS. Consent to the BLM would be issued through correspondence.

### **Substantive Provisions**

The FS's Land Management Planning Rule at 36 CFR 219.13(b)(2) requires the responsible official to provide notice of which substantive requirements of 36 CFR 219.8 through 219.11 are likely to be directly related to the amendment. Whether a rule provision is directly related to an amendment is determined by the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and is informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale (36 CFR 219.13(b)(5)). Based on those criteria, the Planning Rule provision likely to be directly related to the forest plan amendment (if needed) is: § 219.10(a)(2) (multiple use).

### **Additional Information**

The EIS will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to surface resources from the LBA, the electrical powerline, and the associated access roads. In accordance with 40 CFR 1502.14(e), the agencies will evaluate appropriate mitigation measures not already included in the LBA. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and may be considered at multiple scales, including the landscape scale. The agencies will utilize and coordinate the National Environmental Policy Act (NEPA) and land use planning processes to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and section 106 of the National



Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the LBA and proposed plan amendment will assist the agencies in identifying and evaluating impacts to such resources.

Indian Tribal Nations will be consulted on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, state, and local agencies, along with Indian Tribal Nations and other stakeholders that may be interested in or affected by the proposed Federal coal LBA for the Heavener project, the amendment to the ONF Revised Forest Plan, and powerline-associated actions. They are invited to participate in the scoping process and, if eligible, may request or be requested by the agencies to participate in the development of the EIS as a cooperating agency.

Additional opportunities for government-to-government consultation will be provided during the NEPA process.

Dated: December 19, 2023.

**Gregory Smith,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2023-28300 Filed: 12/22/2023 8:45 am; Publication Date: 12/26/2023]